(1)

No. 93-1660

IN THE

Supreme Court of the United States

October Term, 1993

STATE OF ARIZONA,

Petitioner,

vs.

ISAAC EVANS,

Respondent,

WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

BRIEF OF AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

This case involves the question of whether evidence that has been seized incident to an arrest based upon a police computer record is subject to the exclusionary rule when it is subsequently determined that the warrant had been quashed earlier, but the computer records were not timely updated. The States joined herein as amici urge this Court to quash the ruling of the Arizona Supreme Court. This case presents an important vehicle to clarify the scope of the good faith exception to the exclusionary rule. Applying the good faith exception to the present case would be consistent with the good faith defense accorded to police officers in civil actions when an action for false arrest is brought. The well-reasoned civil standard should be applied to criminal cases. As a result, evidence would not be excluded where a reasonable officer in the same circumstances and possessing the same knowledge as the arresting officer could have believed that probable cause existed. Law enforcement agencies possess the professionalism and legal savvy to perform their duty in a reasonable and sensible fashion. In adopting the tendered standard, this Court will not expect law enforcement to be clairvoyant and likewise not require exclusion of otherwise valid evidence resulting from the arrest. The Amici States have a direct and substantial interest in insuring law enforcement have the tools necessary to perform their duty and protect the citizenry.

SUMMARY OF ARGUMENT

In order to comply with the constitutional mandate of the Fourth Amendment, a search incident to arrest is valid only when probable cause supports the arrest. Probable cause to justify an arrest without a warrant is defined as facts and circumstances within the arresting officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing under the circumstances shown that the suspect has committed, is committing, or is about to commit an offense. *Michigan v. DeFillippo,* 443 U.S. 31 (1979). Under this standard, relying on a computer report of an outstanding warrant, with nothing more, satisfies the probable cause standard. The outstanding warrant certainly requires the prudent officer to arrest the suspect. Since the arresting officer has no knowledge that can be directly chargeable to him concerning the validity of the warrant, the officer's failure to arrest could amount to malfeasance. This has been recognized in civil cases where an officer's good faith arrest immunizes him from civil liability.

This probable cause standard, when applied to the facts herein, requires this Court to determine whether an agency's knowledge that a warrant has been quashed may be charged to the officer effectuating the arrest based on a computer record. Since there is no direct contact between the arresting officer and the issuing agency, the knowledge of the warrant being quashed should not be chargeable to the arresting officer. In order to find this, this Court must give a narrow construction to the constructive knowledge of the fellow officer rule of *Whiteley v. Warden,* 401 U.S. 560 (1971).

If the arresting officer is not charged with the knowledge that the warrant was quashed, any evidence obtained from a search incident to the arrest should be subject to a good faith exception to the exclusionary rule.

This would require the government to establish that the officer, based on a mistake of fact, in good faith arrested the suspect. This would further the main purpose behind the exclusionary rule to deter police misconduct. Here, the deterrent effect of the exclusionary rule would not be served and therefore a good faith mistake exception to the exclusionary rule should be adopted by this Court.

ARGUMENT

THE EXCLUSIONARY RULE DOES NOT REQUIRE SUPPRESSION OF EVIDENCE WHICH HAS BEEN SEIZED INCIDENT TO AN ARREST BASED UPON A POLICE COMPUTER RECORD OF AN OPEN WARRANT THAT HAD BEEN QUASHED EARLIER, REGARDLESS OF WHETHER POLICE OR COURT PERSONNEL WERE RESPONSIBLE FOR THE QUASHED WARRANT'S CONTINUED PRESENCE IN A POLICE COMPUTER RECORD.

In *State v. Evans,* 866 P.2d 868 (Ariz. 1994), the Arizona Supreme Court adopted a per se rule which requires the exclusion of all evidence, pursuant to the Fourth Amendment, whenever it is obtained during a search incident to an arrest based upon an erroneous computer record which did not reflect that the arrest warrant had been quashed. The Court held that an arrest, based entirely on an erroneous computer entry, is a warrantless arrest and is unlawful since it lacks probable cause. This holding was based on the reasoning that the arrest was not the result of a reasonable judgmental error of the arresting officer concerning facts which might result in probable cause because the knowledge that the warrant was previously quashed was imputed to the arresting officer.[1] The Court then reasoned that since the arrest, based on the collective police knowledge rule, was without probable cause, the arresting officer's good faith reliance on the computer information is irrelevant because the arrest was based on a nonexistent warrant and not one that was later invalidated, but was relied on in good faith. Therefore, the Court refused to apply or extend the good faith exception to the Fourth Amendment exclusionary rule as established by this Court in *United States v. Leon,* 468 U.S. 897 (1984).

1 The Arizona Supreme Court's holding on this point is based on the collective police knowledge rule of *Whiteley v. Warden,* 401 U.S. 560 (1971) and *United States v. Hensley,* 469 U.S. 221 (1985). Although the Court never cites these cases, the decision clearly rests on this rule of law.

The Amici States submit that this per se rule of suppression is an erroneous interpretation of *Whiteley v. Warden,* 401 U.S. 560 (1971) and *Leon.* This erroneous interpretation resulted in an overly restrictive misapplication of the law to the facts herein.

In *Whiteley,* this Court applied the "fellow officer" or "collective knowledge" rule to warrantless arrests. In *Whiteley,* an arrest warrant was obtained by a county sheriff. The sheriff then issued a message through a statewide law enforcement radio network describing the suspect, his car and the property taken. The message did not specify the evidence that gave the sheriff probable cause to believe the suspect had committed the crime. Another police agency acting upon the radio message, stopped the suspect and searched the car. This Court concluded that since the sheriff had lacked probable cause to obtain the warrant, the evidence obtained by the second police agency during the search had to be excluded. The specific rule of law established in *Whiteley* is that under the "fellow officer" or "collective knowledge" rule, the propriety of a warrantless arrest is determined not solely by whether the arresting officer has personal knowledge of facts which show probable cause, but by whether other policemen who have directed the arrest have such knowledge.

In *United States v. Hensley,* 469 U.S. 221 (1985), this Court directly applied the *Whiteley* probable cause arrest rule to a *Terry*[2] stop effected to investigate a prior crime. This Court held that a stop based on a flyer bulletin is

2 *Terry v. Ohio,* 392 U.S. 1 (1968).

permissible when the officers who issued it and directed others to act upon it had a founded suspicion that the designated person had committed an offense.

The clear and precise holding in *Whiteley* and *Hensley* is that a police officer who arrests or stops a suspect is only chargeable with the collective knowledge of his fellow officer when the arresting officer was affirmatively requested by his fellow officers to take the action so taken. This narrow interpretation of Fourth Amendment precedent has support in this Court's opinion in *California v. Hodari D.*, 499 U.S. 621 (1991). In *Hodari D.*, this Court narrowly defined a Fourth Amendment seizure to be the actual application of physical force to restrain movement but did not include an officer's order to stop when it was ignored by the suspect who then fled.

This interpretation of *Whiteley* and *Hensley* is also in consonance with this Court's definition of probable cause. Probable cause to justify an arrest without a warrant is defined as facts and circumstances within the arresting officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing under the circumstances shown that the suspect has committed, is committing, or is about to commit an offense. *Michigan v. DeFillippo,* 443 U.S. 31 (1979). Under this standard, relying on a computer report of an outstanding warrant, with nothing more, satisfies the probable cause standard. The outstanding warrant certainly requires the prudent officer to arrest the suspect. Since the arresting officer has no knowledge that can be directly chargeable to him concerning the validity of the warrant, the officer's failure to arrest could amount to malfeasance. This has been recognized in civil cases where an officer's good faith arrest immunizes him from civil liability. *Hunter v. Bryant,* 502 U.S. ____, 112 S.Ct. 534 (1991).

Since the "good faith mistake" doctrine has been implemented in civil cases under facts similar to those herein, Amici submit that application of this doctrine should be extended to criminal cases. This position is supported by the Court's decision in *Leon* to establish, for the first time, a good faith exception to the exclusionary rule. Although this Court recognized that, in *United States v. Williams,* 622 F.2d 830 (5th Cir. 1980) *(en banc), cert. denied,* 449 U.S. 1127 (1981), the Fifth Circuit had adopted a good faith exception to the exclusionary rule broader than the one announced in *Leon,* this Court did not adopt the reasoning of *Williams* in *Leon.* Amici seek to have this Court adopt the analysis of *Williams* in this case. *Id.* at 913, n.11.

The *Williams'* good faith exception to the exclusionary rule, which was not specifically disapproved of in *Leon,* is twofold. First, as was recognized in *Leon,* the exception consists of good faith based on technical violations. Second, yet unrecognized by this Court, it consists of good faith based on mistake of fact or law. Under the good faith based on mistake of fact or law standard, "evidence is not to be suppressed...where it is discovered by officers in the course of actions that are taken in good faith and in the reasonable, though mistaken, belief that they are authorized." *Williams, supra* at 840.

The mistaken belief good faith exception to the exclusionary rule should be acknowledged by this Court. In so doing, this Court will further the main purpose of the exclusionary rule. As this Court stated in *United States v. Peltier,* 422 U.S. 531, 542 (1975):

> If the purpose of the exclusionary rule is to deter unlawful police conduct, then evidence obtained from a search should be suppressed only if it can be said that the law enforcement officer had knowledge, or may properly be charged with

knowledge, that the search was unconstitutional under the Fourth Amendment.

Application of the foregoing standard herein establishes the officer's good faith in arresting the Respondent. Under a narrow interpretation of *Whiteley,* the only facts chargeable to the arresting officer was a presumptively valid warrant. As such, he could not know that the warrant had been executed but not removed from the computer records. Therefore, based on the only knowledge the officer had, the search was constitutional since it was supported by a valid warrant. The arrest and subsequent search were made through a good faith mistake that the warrant was still open. Therefore, exclusion of the evidence would not be in accordance with the main purpose behind the exclusionary rule.

Adoption of the foregoing rule would not leave an aggrieved party without remedies. As with all good faith defenses, it is the government's responsibility to prove that it existed. If it is shown that the arresting officer had any knowledge which may give a reasonable man doubt that the warrant was still valid, then good faith reliance might not exist. If the suspect produces documents showing the warrant was satisfied, the arresting officer could be required to take an intermediate step to determine the validity of the warrant. The officer could be required to detain the suspect without a search until the validity of the warrant is determined. If the warrant is invalid, the intrusion into the individual's rights was only minimal since a search did not occur.

A second remedy would be available to an aggrieved party upon proof that the agency that originally issued the warrant acted in bad faith. Allegations of illegal searches and seizures, whether in the criminal or civil context, are always reviewed under the Fourth Amendment "objective reasonableness" standard. *Graham v. Conner,* 490 U.S. 386 (1989). This can be done with a showing of a lack of probable cause

for the warrant, without a good faith reliance thereon. It can also be established with a showing of deliberate indifference or utter disregard for removing executed warrants from computer records.

Adoption of the foregoing rule of law would serve the exclusionary rule well as evidence uncovered by officers during a search conducted pursuant to a good faith mistake would not be suppressed. The rule would also serve the deterrent purpose since evidence would still be subject to exclusion in the absence of good faith and would also be subject to exclusion if the issuing agency acted improperly in securing the warrant or removing the warrant from computer records. Thus, the interests of all parties would be served by the adoption of the rule of law espoused herein.

Such a rule or law would also be consistent with the good faith defense to civil liability. A police officer has a good faith defense for false arrest when he can establish that a reasonable officer in the same circumstances and possessing the same knowledge as the arresting officer could have believed that probable cause existed. Actual probable cause is not necessary for an arrest to be objectively reasonable. *Lowe v. Aldridge,* 958 F.2d 1565 (11th Cir. 1992). Therefore, adoption of the good faith mistake exception to the exclusionary rule would not encourage law enforcement agencies to disregard the law, because they would still face the sanction of money judgments for civil rights violations.

Finally, extension of the good faith exception based on mistake would be consonant with the *Leon* good faith exception since it is also grounded in civil liability law. As this Court has held in *Malley v. Briggs,* 475 U.S. 335, 344-345 (1986), "[o]nly where the warrant is so lacking in indicia of probable cause as to render official belief in its existence unreasonable will the shield of immunity be lost." This is the same as the *Leon* standard — a good faith

exception is not permitted when it is objectively ascertainable that a reasonably well trained officer would have known that the affidavit upon which the warrant was based was so lacking in indicia of probable cause as to render official belief in its existence entirely unreasonable.

CONCLUSION

The States joining the brief submit that the decision of the Arizona Supreme Court should be reversed.

Respectfully submitted,

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